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ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

JUSTIN M. CURTIS
Deputy State Appellate Public Defender
I.S.B. #6406
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|--------------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 44548 |
| Plaintiff-Respondent, |) | |
| |) | ADA COUNTY NO. CR-FE-2016-1807 |
| v. |) | |
| |) | |
| STEVEN KAY WHITE, |) | APPELLANT'S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| <hr/> |) | |

STATEMENT OF THE CASE

Nature of the Case

Steven Kay White appeals from his judgment of conviction for possession of a controlled substance (methamphetamine) with the intent to deliver, possession of a controlled substance (methadone), possession of a controlled substance (marijuana), and possession of drug paraphernalia. Mr. White was found guilty following a jury trial and was found to be a persistent violator. The district court imposed sentences of ten years, with three years determinate, one year determinate, one year in jail, and six months in jail. Mr. White appeals, and he asserts that

the district court abused its discretion by imposing an excessive sentence for possession of a controlled substance with the intent to deliver.

Statement of the Facts & Course of Proceedings

On February 9, 2016, officers from the Boise Police Department were dispatched to a report of a suspicious vehicle in a driveway. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) The reporting individual indicated that there were two suspects in the vehicle and were possibly smoking something, and it was noted that the house in question had been reported by multiple neighbors as being a potential drug house. (PSI, p.3.) Upon their arrival, the officers found a woman standing near the driver's side door, and a man, Mr. White, sitting in the vehicle. (PSI, p.3.)

Officers searched Mr. White's vehicle and found a digital scale, a used needle, multiple baggies containing a crystal-like substance believed to be methamphetamine, a green leafy substance believed to be marijuana, and several pills that were believed to be methadone. (PSI, pp.3-4.)

Mr. White was charged with possession of a controlled substance (methamphetamine) with the intent to deliver, possession of a controlled substance (methadone), possession of a controlled substance (marijuana), and possession of drug paraphernalia. (R., p.25.) The State subsequently filed a persistent violator enhancement. (R., p.48.) At trial, Mr. White was found guilty of the offenses and was found to be a persistent violator. (R., pp.90-96.) The district court imposed sentences of ten years, with three years determinate, one year determinate, one year in jail, and six months in jail, respectively. (R., p.101.) Mr. White appealed. (R., p.105.) On

appeal, Mr. White asserts that the district court abused its discretion by imposing an excessive sentence for possession of a controlled substance with the intent to deliver.¹

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of ten years, with three years fixed, upon Mr. White following his conviction for possession of a controlled substance with the intent to deliver?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Ten Years, With Three Years Fixed, Upon Mr. White Following His Conviction For Possession Of A Controlled Substance With The Intent To Deliver

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. White’s sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. White “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

¹ Because Mr. White has already served his sentences on the remaining charges, he does not challenge them on appeal.

Stevens, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Mr. White addressed the district court at the sentencing hearing. He stated,

I would like to acknowledge my transgressions today before you and God and take full responsibility for my actions. I am a benefit to the community.

I see that my oldest daughter and her husband drove down from Twin Falls today. I have two daughters and I have five grandchildren that I have been away from six long years now. And unfortunately, I’ve got myself in another mess.

You know, I take full responsibility for my actions. The last thing I am is a drug dealer. You know, I forgot my packet for you today with the reference letters from my family.

You know, I know that my brother talked a little bit about the help I do with the people that I’m around, as that’s part of my mission. I have been around Alcoholics Anonymous and Narcotics Anonymous now, since 1987 or 1988 when I went through the Walker Center. And so I have been around the practice of helping others for a long time.

(Tr., p.277, L.6 – p.278, L.1.) With regard to the night in question, Mr. White stated that he had heard that Laurie Tippet was being beaten by her boyfriend and was going to help her move out of that situation. (Tr., p.278, Ls.2-13.) While he was there, another person came along to help move and this person drove Mr. White’s vehicle; “him and Laurie were basically in control of my Jeep.” (Tr., p.278, Ls.14-20.) He stated that the police never talked to the individual who drove his Jeep, but Mr. White did acknowledge that he made a lot of mistakes that night. (Tr., p.279, Ls.12-25.)

Mr. White accepted responsibility for his part in the incident and acknowledged that he had made transgressions. He had support from his family and had helped individuals with

substance abuse problems in the past. Considering this information, Mr. White respectfully submits that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. White respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 17th day of November, 2017.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of November, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

STEVEN KAY WHITE
INMATE #97736
SICI
PO BOX 8509
BOISE ID 83707

DEBORAH A BAIL
DISTRICT COURT JUDGE
E-MAILED BRIEF

BENSON BARRERA
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JMC/eas